

### **REMARKS/ARGUMENTS**

Reconsideration is requested. Claims 1-12 are pending. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance and such action is requested.

Independent claims 1, 5 and 10 have been amended to clarify that the portion of the bottom surface of the support surrounding the aperture with a reflectivity of less than about 12 percent at between about 600 and 730 nm is the same portion that is recited as corresponding (along with the aperture) to an optical viewing area of the colorimeter.

Independent claims 1, 5 and 10 have also been amended to recite that the reagent pad is "contacting" the sample receiving aperture (see, for example, FIGs. 2 and 3 of the original disclosure).

Dependent claims 3, 7 and 11 have been amended to clarify that it is the sample-receiving aperture that is suitable for receiving a fluid volume of less than or equal to 5 micro-liters (see, for example, page 5, lines 1-15 of the original disclosure).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

#### **35 U.S.C. §112 Rejections**

The subject matter of claims 1-12 was rejected as indefinite under 35 U.S.C. §112, second paragraph. In particular, the Office Action questioned the clarity of the recited "at least a portion of the bottom surface . . . the support surrounding the aperture. . ."

Applicants respectfully submit that independent claims 1, 5 and 10, as currently amended, are definite and allowable under 35 U.S.C. §112.

#### **35 U.S.C. §102 Rejections**

The subject matter of claims 1-3 and 10-11 was rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,299,838 to Hirayama et al. (hereinafter "Hirayama").

Applicants' understanding of Hirayama has been detailed in previous Responses. However, to elaborate on items that are particularly relevant to the present Response,

Hirayama, as understood, teaches a reagent layer (layer 3 in FIG. 1 of Hirayama) that is in contact with a sample holding room (element 4 in FIG. 1 of Hirayama). The sample holding room is in contact with a sample-supplying hole (element 51 in FIG. 1 of Hirayama). The sample holding room, therefore, intervenes between the reagent layer and the sample-supplying hole.

In addition, Hirayama teaches that a cover (element 5 in FIG. 1 of Hirayama) can be black in color. It should be noted, however, that this cover is opposite the measurement area of the Hirayama device and, therefore, shielded during measurement by a thermoplastic-coated support (element 1 in FIG. 1 of Hirayama, see also col. 5, lines 56-58 of Hirayama).

Hirayama does not describe, teach or suggest the test device or system as recited in claims 1 and 10. For example, Hirayama does not describe, teach or suggest a reagent pad that is in contact with a sample receiving aperture. Nor does Hirayama teach that a portion of a bottom surface of a support with a specified reflectivity correspond to an optical viewing area. Rather, Hirayama teaches that (i) a reagent layer be in contact with a sample holding room that is distinct from a sample-supplying hole and (ii) that a cover (which is apparently not part of an optical viewing area) be black in color while leaving the color of a support undefined.

For at least the foregoing reasons, Applicants respectfully submit that the subject matter of amended claims 1 and 10 is neither anticipated nor obvious over Hirayama and is allowable under 35 U.S.C. §102(e). Since claims 2, 3 and 11 depend from and further limit their associated independent claims, they are allowable for at least the same reasons.

### 35 U.S.C. §103 Rejections

The subject matter of claims 3-9 and 11 was rejected under 35 U.S.C. §103(a) as obvious over the combination of Hirayama and U.S. Patent No. 5,843,692 to Phillips et al. (hereinafter "Phillips"). In this regard, Phillips was cited for volume and notch teachings.

Applicants respectfully submit that Phillips does not cure the deficiencies of Hirayama described above and that these deficiencies are applicable to independent claim 5 as well as independent claims 1 and 10. Moreover, since claims 3, 4, 6-9 and 11 depend from and further limit their associated independent claims, they are patentable for at least the same reasons.

## CONCLUSION

Applicants respectfully request that, in light of the amendments and explanations above, the Examiner reconsider and withdraw his rejections. Applicants respectfully submit that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicants invite the Examiner to telephone the undersigned so that issuance can be expedited.

The Commissioner is hereby authorized to charge any required fees due in connection with this submission, including petition and extension of time fees, and to credit any overpayment to Deposit Account No. 10-0750 (Docket No. LFS-123US/MM) (Johnson & Johnson).

Respectfully submitted,

/Mayumi Maeda/

Dated: April 3, 2006

By: \_\_\_\_\_  
Mayumi Maeda  
Reg. No. 40,075

Philip Johnson, Esq.  
Johnson & Johnson  
International Patent Law Division  
P.O. Box 1222  
New Brunswick, NJ 08903  
Phone: 408-956-4790